

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

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DAMIEN SHONTELL HEWLETT,

Plaintiff,

Case No. 22-cv-1376

v.

JASON HILL and ZACHARY LANGE,

Defendants.

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**PLAINTIFF'S MOTIONS IN LIMINE – Number 19**

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Plaintiff Damien Shontell Hewlett, by his counsel, pursuant to the Court's April 19, 2024, Pretrial Order (Dkt. # 56), and L.R. 16(b) files his motions in limine as follows:

**Motion in Limine – Number 19**

Plaintiff requests a spoliation instruction as to the blade, sheets, body camera , and photographic evidence that was not preserved nor produced by Defendants. Plaintiff contends that the Defendants at one time possessed media evidence including body camera video and photographs. Additionally, Plaintiff contends that the Defendants at one time possessed physical evidence such as a blade and sheet used by Plaintiff to harm himself. However, the Defendants contend that they deleted the videos, that the photographs never existed, and that the sheets and blade(s) were destroyed.

Plaintiff seeks an adverse inference instruction as it relates to evidence that was destroyed by Defendants. See *Miksis v. Howard*, 106 F.3d 754, 762-763 (7th Cir. 1997) (party seeking adverse inference must prove that other party intentionally destroyed evidence in bad faith). The

Seventh Circuit “requires a showing of an intentional act by the party in possession of the allegedly lost or destroyed evidence” to support a missing or destroyed evidence instruction. *Spesco, Inc. v. General Elec. Co.*, 719 F.2d 233, 239 (7th Cir. 1983); see also *Adkins v. Mid-America Growers, Inc.*, 141 F.R.D. 466, 473 (N.D. Ill. 1992) (“In cases where evidence has been intentionally destroyed, it may be presumed that the materials were relevant.”). If the facts are not in dispute, the court ordinarily will decide the sanction for an intentional and bad faith spoliation, which might include an instruction with an inference such as that set forth in this instruction.

Respectfully submitted this 19<sup>th</sup> day of September 2024.

**MOTLEY LEGAL SERVICES**

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